

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSEPH ALBERT TAYLOR,

Plaintiff,

VS.

RAYMOND EDELMAN, et al.,

Defendants.

4:03cv3124

MEMORANDUM AND ORDER

This matter is before the court on filing no. 82, the Response filed by the plaintiff, Joseph Albert Taylor, to the Memorandum and Order of October 4, 2005 (filing no. 80), in which Magistrate Judge F. A. Gossett informed the plaintiff that, although the court can issue and serve trial subpoenas at the plaintiff's request, the in forma pauperis ("IFP") statute, 28 U.S.C. § 1915, does not cover the costs of witness fees and witness travel expenses. Witness fees are \$40 per day and must be tendered with the subpoena ad testificandum served on each trial witness. See 28 U.S.C. § 1821(b). In a civil rights case, neither the United States nor the U.S. Marshal bears the costs of witness fees and travel expenses even when the plaintiff is proceeding IFP. United States Marshals Service v. Means, 741 F.2d 1053, 1057 (8th Cir. 1984) (*en banc*).

In filing no. 82, the plaintiff names three witnesses for whom he requests trial subpoenas. However, he also states that he lacks the funds to pay the witness fees and travel costs. Of those three persons, the plaintiff correctly points out that one, Harold W. Clarke, is a party to this case who has been served with process (filing no. 25) and who has answered the complaint (filing no. 44). Therefore, as a named defendant, Mr. Clarke is not a witness, but a party. There has never been a motion by Mr. Clarke to be dismissed from this action, and thus, he must appear at trial. Counsel for the defendants shall ensure that Mr. Clarke is aware of his obligation to attend the trial.

As for Mr. Trautwein and Ms. Hassenfelt, even if the plaintiff cannot pay the expenses of compelling their appearance at trial, he is free to contact those persons to request their presence at trial. Under no circumstances may the plaintiff represent that the *court* requires their attendance, however. Absent the plaintiff's payment of the witness fees and travel costs, the court will **not** issue subpoenas to compel the presence of those persons at the trial of this matter.

SO ORDERED.

DATED this 24th day of October, 2005.

BY THE COURT:

s/ *Richard G. Kopf*
United States District Judge